

November 2003 ARRC Meeting

Summary of Issues

The December meeting of the Administrative Rules Review Committee will be on Tuesday, December 9th, and Wednesday, December 10th, 2003 in Statehouse Room #116. Special reviews now include:
HUMAN SERVICES DEPARTMENT, Subsidies for special needs adoptions, ARC 2900B.
PODIATRY EXAMINERS, Sedation requirements, ARC 2891B.

For more information contact Joe Royce at 281-3084; e-mail: joe.royce@legis.state.ia.us.

ADMINISTRATIVE SERVICES DEPARTMENT, Procurement of goods & services, 10/29/03 IAB, ARC 2885B, ADOPTED.

BACKGROUND: The department proposes to consolidate purchasing rules from the old department of general services into one chapter. The rules apply to the purchase of goods and services of general use by executive branch agencies other than those exempted by law.

COMMENT: Most of the issues concerning this new set of rules have been resolved. The remaining controversy in this filing involves the concepts of “sole source procurement” and the use of master contracts in making state purchases. One commentator noted that Iowa law calls for competitive bidding for major purchases, with a limited number of exceptions. The individual contended that in the area of technology it is relatively easy to obtain compatible products and services, and that greater savings would be possible through competitive bidding. Department representatives responded that this particular issue involved the use of master contracts, where the price for a product (even a large system) can be established through the bidding process and then state agencies may simply purchase the item at the contract price. Department representatives maintain that a bid process has been used, and that agencies are now simply making purchases at that contract price. Committee members were concerned that relatively large purchases could be made without a specific bid for each purpose, but felt the department and concerned vendors should discuss these rules further before the committee came to any conclusions. The committee agreed to possibly review these rules, at a special telephonic conference held before the rules became effective (December 3rd 2003).

ACTION: No action taken, additional review possible.

ELDER AFFAIRS DEPARTMENT, Volunteer ombudsman, 10/29/03 IAB, ARC 2904B, NOTICE.

BACKGROUND: This new program, created by federal law, provides for the certification of volunteer long-term care ombudsmen.

COMMENT: The ombudsman has a staff of three full-time employees, with over 39,000 care facility beds in Iowa. To ease the workload the department begins a training program for volunteers. Once trained, they will work under the direction of one of the three ombudsmen by providing “intake” services and any follow-up duties that may be required. Committee members expressed concern that the use of volunteer ombudsmen would diminish the role of resident care committees (RAC) in favor of centralized state control. Members felt that local oversight was very important, noting that RAC members are community representatives who are very familiar with both the facility and its residents. Department representatives denied that the volunteer ombudsman program would supplant local committees; the representatives stated that the additional training of

the ombudsmen would allow them to follow-up more effectively on problems found by the local committee.

Committee members remained unsure whether this level of oversight was necessary, and requested that the Department of Inspections and Appeals be contacted to determine how that departments' inspection process coordinates with that of Elder Affairs.

ACTION: No action taken, further review on final adoption.

HUMAN SERVICES DEPARTMENT Subsidies for special needs adoptions, 10/29/03 IAB, ARC 2900B, ADOPTED.

BACKGROUND: The department adopts a series of changes to the adoption subsidy program. This program encourages the adoption of special needs children by providing a variety of benefits. Analysis by the Legislative Services agency indicates these changes are intended to save some \$400,000.

COMMENT: These revisions are very controversial. The committee heard testimony from a number of adoptive parents who contend the changes would discourage future adoptions and make it extremely difficult to care for special needs children who are currently adopted. Commentators noted that it was especially unfair to change the subsidies available to those who had already adopted children. Members decided that a temporary delay was appropriate to allow additional time for analysis and discussion of this rule at the December meeting.

ACTION: 70 DAY DELAY; additional review in December.

HUMAN SERVICES DEPARTMENT Crossover claims, 10/15/03 IAB, ARC 2844B, ADOPTED.

BACKGROUND: Under Medicaid policy claims for hospital services provided to patients who are eligible for both Medicare and Medicaid automatically "crossover", allowing Medicaid to pick up that portion of the hospital care not covered by Medicare.

COMMENT: The elimination of crossover claims has been approved in House File 667, contingent on federal approval of a state plan that would in effect shift some of the cost from the state/federal Medicaid program to the completely federal Medicare program. The Legislative Services Agency estimated a savings of some \$4.3 million in state money. Department representatives told the committee that obtaining the required federal approval was unlikely

ACTION: No action taken.

HUMAN SERVICES DEPARTMENT SMAC list, 10/15/03 IAB, ARC 2841B, ADOPTED.

BACKGROUND: Medicaid reimbursement rates for prescription drugs are determined through a complicated process; one of the factors considered in this calculation is the state maximum allowable cost (SMAC). House File 619 was enacted to lower the overall costs of Medicaid prescription drugs; in part it resets the adjustment factor, as a matter of law, down to 1.4 and requires participating pharmacists to gather information necessary to monitor and revise drug reimbursement rates. The Act also lowers the dispensing fee from \$5.17 to \$4.26 and lowers the estimated acquisition cost from the average published wholesale price less 10 percent to the average wholesale price less 12 percent.

COMMENT: The Legislative Services Agency has estimated savings of roughly \$5 million. Committee members opined that the drugs specified in the SMAC list could be expanded to increase savings. Department representatives suggested that further expansion of the list should be accomplished by legislative action.

ACTION: No action taken.

INSPECTIONS AND APPEALS DEPARTMENT Registration of amusement devices,
10/29/03 IAB, ARC 2912B, NOTICE.

BACKGROUND: House File 594 provides for the annual \$25 registration of every “electrical and mechanical amusement device” which dispenses a prize to the patron. A \$2,500 fee is imposed on manufacturers and distributors. These devices are similar to video slot machines, dispensing slips good for food, beverage or prizes at the establishment. There are approximately 10,000 machines and 45 distributors in Iowa.

COMMENT: Under the rules proposed by the department the term “distributor”, and hence the \$2,500 annual fee does not apply to a person who owns a device but does not intend to sell or lease it to another. This interpretation means that non-profit service clubs (eg: VFW’s) do not have to pay the distributor fee. Representatives of these distributors opposed this provision, contending that it is too broad. They felt this would allow chain stores to simply purchase machines and place them in company stores throughout Iowa. The distributors also stated under this exclusion the distributors themselves might be exempt, since they don’t sell or lease the actual machines. Department representatives responded that the term “distributor” applied to any person who made the machines available, regardless of any other definition.

Some committee members were concerned these machines should have counting devices recording the number of plays on the machine. It was noted that without these counters it would be easy to “skim” unreported money from the machine. Department representatives questioned whether the statutory language would allow them to add such a requirement.

ACTION: No action taken.